U.S. Department of Labor

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Issue Date: 04 December 2006

CASE NO.: 2005-LHC-02661

OWCP NO.: 01-161866

In the Matter of

M. M.[1]
Claimant

v.

BATH IRON WORKS CORPORATION
Employer / Self-Insured

and

AIG CLAIMS/BIRMINGHAM FIRE INSURANCE COMPANY
Carrier

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS
Party-in-Interest

Appearances:

G. William Higbee, Esq., McTeague, Higbee, Case, Cohen, Whitney, & Toker, P.A., Topsham, Maine, for the Claimant

Stephen Hessert, Esq., Norman, Hanson, & DeTroy, LLC, Portland, Maine, for the Employer/Self-Insured

Nelson J. Larkins, Esq., Preti, Flaherty, Beliveau, & Pachios, LLP, Portland, Maine for AIG Claims/Birmingham Fire

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[1] In accordance with Claimant Name Policy, which became effective on August 1, 2006, the Office of Administrative Law Judges uses a claimant's initials in published decisions in lieu of the claimant's full name. *See* Mem. from C.J. John M. Vittone, ALJ, Claimant Name Policy (July 3, 2006) *available at* http://www.oalj.dol.gov/PUBLIC/RULES_OF_PRACTICE/REFERENCES/MISCELLANEOUS/CLAIMANT_NAME_POLICY_PUBLIC_ANNOUNCEMENT.PDF.

Before: Daniel F. Sutton
Administrative Law Judge

DECISION AND ORDER AWARDING BENEFITS

I. Statement of the Case

This case arises from a claim for worker's compensation benefits under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901, *et seq*. (the "Act"), filed by M. M. (the "Claimant") against his employer, Bath Iron Works Corporation (the "Employer" or "BIW"), and BIW's insurance carrier, AIG Claims/Birmingham Fire Insurance Company ("Birmingham Fire"). After an informal conference before the District Director of the Department of Labor's Office of Workers' Compensation Programs ("OWCP"), the District Director referred the matter to the Office of Administrative Law Judges ("OALJ") on September 15, 2005 for a formal hearing pursuant to section 19(d) of the Act. A hearing was conducted on February 13, 2006 in Portland, Maine, at which time all parties were afforded the opportunity to present evidence and oral arguments. The Claimant appeared at the hearing represented by counsel, and appearances were made by attorneys on behalf of the Employer and Birmingham Fire. No appearance was made on behalf of the Director, OWCP who is an interested party in view of the pending requests by the Employer and Birmingham Fire for liability relief from the Special Fund pursuant to Section 8(f) of the Act. The parties offered stipulations which were entered into the record as Joint Exhibit ("JX") 1.[2] Testimony was heard from the Claimant. Hearing Transcript ("TR") 14-43. Documentary evidence was admitted without objection as Claimant's Exhibits ("CX") 1-7, Employer's Exhibits ("EX") 1-22, and Birmingham Fire's Exhibits ("BX") 1-13. TR 11-14. The formal papers were admitted without objection as Administrative Law Judge's Exhibits ("ALJX") 1-12. TR 6-10. After the hearing, the parties filed timely briefs. The record is now closed.

After careful analysis of the evidence contained in the record and the parties' arguments, I conclude that the Claimant is entitled to an award of permanent partial disability compensation for a 21.4 percent permanent binaural occupational hearing loss, as well as medical care, interest and attorney's fees. I further find that BIW is the party responsible for payment of the Claimant's benefits and that it is entitled to liability relief from the Special Fund because it has shown that it continued to employ the Claimant despite the presence of a manifest permanent hearing loss which pre-existed the period of BIW's liability as a self-insurer. My findings of fact and conclusions of law are set forth below.

II. Stipulations and Issues Presented

The parties have stipulated to the following: (1) the Act, 33 U.S.C. § 901, *et seq.*, as amended, applies to this claim; (2) the injury occurred at BIW; (3) there was an Employer/Employee relationship at the time of the injury; (4) the Employer was timely notified of the injury; (5) the claim for benefits was timely filed; (6) the Notice of Controversion was timely filed; (7) the Informal Conference was conducted on September 15, 2005; (8) the

[2] The stipulations were made between the Claimant, BIW and Birmingham Fire. The Director, OWCP has not participated in this case and did not join in the stipulations. However, the Director has offered no evidence which contradicts any of the stipulated facts.

applicable national average weekly wage is $757.34; and (9) Birmingham Fire insured BIW from August 1, 1986 to August 31, 1988, and BIW has been self-insured since September 1, 1988. JX 1.

The unresolved issues are: (1) the causation and fact of the injury; (2) the percentage of the Claimant's permanent partial disability; (3) which party is responsible for payment of the Claimant's benefits; and (4) whether the responsible party is entitled to liability relief from the Special Fund pursuant to Section 8(f) of the Act, 33 U.S.C. § 908(f). JX 1.

III. Findings of Fact and Conclusions of Law

A. The Claimant's Work History and Exposure to Noise

The Claimant, M. M., was born in 1957 and was 48 years of age at the time of the hearing. TR 17. He graduated from high school in 1976. TR 17, 26. After graduation, the Claimant worked from 1976 to 1978 in a gas station where he pumped gas but did not perform any mechanical work. TR 17, 28-29. He later worked in construction from 1978 to 1986 as a carpenter. TR 17, 26-27. During this period, the Claimant built new houses and did remodeling work. TR 27. As a carpenter, the Claimant mostly worked with drills, saws, regular and power hammers, and stationary power tools such as table saws and miter boxes, and he installed insulation and sheet rock. TR 27-28.

BIW hired the Claimant on September 2, 1986, and the Claimant has worked the past 20 years for BIW as a shipfitter in Department 50. TR 17, 29, 31. For ten of these years, from 1989 to 1999, the Claimant worked at BIW's shipyard in Portland, Maine. TR 18. The remainder of his time has been at BIW's main shipyard in Bath, Maine. *Id.* The Claimant spends a few hours per week in the shops at the shipyard, but most of his work at BIW is performed aboard ships. TR 18, 29. The Claimant's job title has varied from shipfitter to structural fitter, but his duties have remained the same. TR 41-42; CX 4 at 7.

The Claimant testified that he has been exposed to loud noise throughout his twenty years of employment at BIW. TR 18-19, 30. However, he said that he was exposed to more noise from 1986 until 1996 when he did a lot of chipping, grinding, wheel and sawzall cutting, sanding work on metal surfaces. TR 18-19. In addition, he worked around other employees who were using cutting, chipping, grinding and sanding tools, and he was occasionally exposed to hammering and pounding noise from working nearby erection crews. TR 20-21, 30-31. The Claimant said that a three-year period during the 1990s, when Department 50 employees did all chipping and grinding work, including chipping and grinding for other trades, was the noisiest period of his employment at BIW. TR 30-32.

The Claimant testified that he has worn foam earplugs as hearing protection throughout his employment at BIW, and he wears double protection, consisting of plugs and earmuffs, whenever he operates a chipping gun. TR 21, 23, 30, 36. The Claimant also testified that he always wore hearing protection wherever he believed protection was required by BIW or OSHA. TR 29-30. However, he added that he is often required to remove his earplugs a little if he needs to communicate with his co-workers on the job. TR 21, 23, 32-33. Although he is cautious

about removing his hearing protection only when there is no steady noise or after moving away from areas where anyone is using a chipping gun, he occasionally hears loud noise. TR 21, 33.

Regarding his hearing, the Claimant testified that he began to experience a lot of ringing in his ears after working a few years at BIW. TR 38. BIW's first aid department tested his hearing which continued to worsen so that he was placed in an OSHA hearing loss program. *Id.* In July of 2004, he began wearing a hearing aid that BIW purchased for him after sending him out for a hearing evaluation which showed that he had a hearing impairment. TR 24, 40. Since that evaluation, the Claimant has seen three doctors for his hearing loss, Dr. Gregory L. Penner, Dr. Peter J. Haughwout and Dr. Michael Makaretz. TR 24-25.[3] The Claimant testified that Dr. Makaretz spent very little time with him, only looked at his ears and throat, did not ask any questions about his noise exposure at BIW and only requested information on when his hearing problems began. TR 25.

During his leisure time, the Claimant rides snowmobiles and uses power tools on home improvement projects. TR 38-39. However, he stated he does not use these tools often and does not use a tractor. *Id.* The Claimant also owns a chainsaw but testified that he only used it once several years ago to cut firewood. TR 39. He occasionally hunts deer with a 30/30 caliber rifle, but he has only fired the rifle about four times since 2003 and wears earplugs while hunting to protect his hearing. TR 39-40.

The Claimant testified he has never had any trauma, blunt blows to his head, diabetes, neurological damage, or used any strong medications. TR 23-24. Although he had an ear infection when he was a child, the Claimant denied any hearing problems during his childhood. *Id.* His mother is about seventy years old and has worn a hearing aid since 2003. TR 37, 43. The Claimant has two sisters, ages 46 and 49, and he said that neither sibling uses hearing aids or has any hearing problems, although he is unaware if they have ever had an audiogram performed. TR 37-38. The Claimant has no other family history of hearing problems. *Id.*

B. Medical Evidence of the Claimant's Hearing Impairment

BIW performed a pre-employment audiological evaluation in August 1986. CX 6(A) at 9; EX 17 at 43; BX 7 at 31. This results of the pre-employment audiogram showed no permanent loss when calculated under the American Medical Association, Guide to the Evaluation of Permanent Impairment (the "AMA Guides") as required by section 8(c)(13)(E) of the Act. *See* BX 12.[4] Thereafter, BIW routinely tested the Claimant's hearing throughout his employment. CX 6(A); EX 17; BX 7. The results of those audiograms produced the following binaural impairment percentages under the AMA Guides: 8/22/86 (0%); 11/3/86 (0%); 7/15/87 (0%); 4/5/88 (9.1%); 4/26/88 (less than .9%); 12/22/88 (8.1%); 2/14/89 (9.7%); 5/4/89 (11.6%); 10/31/89 (9.7%); 7/18/91 (18.8%); 11/4/92 (14.1%); 9/30/94 (13.8%); 12/19/95 (13.1%); 9/18/96

[3] Haughwout is misspelled in the Hearing Transcript as "Hallot."

[4] All of the audiogram results on the record, with the one exception of the most recent audiogram on November 21, 2005, are summarized in a document that was introduced by Birmingham Fire without objection. BX 12. This exhibit also contains calculations of the percentage of hearing loss under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Ed. as required by section 8(c)(13)(E).

(13.1%); 9/10/97 (14.4%); 9/22/98 (20%); 3/10/00 (18.1%); 3/20/00 (11.9%); 3/7/01 (15.9%); 3/6/02 (17.8%); 4/29/03 (13.4%); 5/5/03 (22.5%); 4/14/04 (17.5%). BX 12. In an affidavit, Maria Mazorra, M.D., BIW's Chief of Occupational Medicine, stated that certified audiology technicians, whose certifications are updated every five years, perform all BIW audiograms. EX 22. Dr. Mazorra also stated that audiological testing equipment used at BIW is calibrated annually in accordance with American National Standard Specifications for Audiometers. *Id.*

On May 24, 2004, the Claimant underwent an audiological evaluation at Pine Tree Society ("Pine Tree") by Robin L. Galleher, M.S.P.A.-audiologist, CCC-A. CX 6(B). Along with the audiogram, Ms. Galleher noted the Claimant's history of noise exposure. *Id.* She also indicated that BIW's routine testing shows significant change in the Claimant's hearing impairment. *Id.* Ms. Galleher reported that the Claimant's pure tone thresholds suggest a moderately severe to moderate bilateral sensorineural hearing loss and that his speech thresholds agree with the audiogram. *Id.* Ms. Galleher noted that otoacoustic emissions were absent for both ears, which is consistent with hearing loss that is greater than 30 dB HL. *Id.*

Terry Gauthier, M.S., CCC-A performed the Claimant's most recent audiological evaluation on November 21, 2005 at the office of Dr. Makaretz. EX 21 at 52. At his deposition, Dr. Makaretz stated that Ms. Gauthier is a certified audiologist and that he believes the machine use is calibrated annually, although he was not sure how often. EX 14 at 13-14.

1. Dr. Penner's Evaluation and Opinion

On referral from BIW's Occupational Health Department, Gregory L. Penner, M.D. evaluated the Claimant on June 20, 2003.[5] CX 6(C). Dr. Penner noted that the Claimant has been exposed to grinding tools, but that he wore earplugs faithfully throughout his career and has no family history of middle-aged hearing loss. *Id.* Dr. Penner reported that over the seventeen years that BIW had performed its audiograms, the Claimant has developed a moderate to high frequency threshold shift between 20 and 35 dB. *Id.* He also indicated that the Claimant's audiometric findings on August 22, 1986 and May 5, 2003 show a shift at 4000 Hz of 35 dB in the left ear and 25 dB in the right ear, and at 8000 Hz, the audiometric findings shift 25 dB in the left ear and 20 dB in the right ear. *Id.* Dr. Penner opined that the Claimant has a combination hearing loss "suggestive of both noise-induced hearing loss and presbycusis, or familial, high sensorineural hearing loss." *Id.* Dr. Mazorra, the BIW Chief of Occupational Medicine, concurred with Dr. Penner's assessment that there is evidence of noise-induced damage to the Claimant's hearing. CX 6(A) at 27-28.

2. Dr. Haughwout's Evaluation and Opinion

Peter J. Haughwout, M.D., an otolaryngologist and head/neck surgeon, saw the Claimant for a hearing loss evaluation on July 19, 2005.[6] CX 6(D). In an opinion letter dated July 26, 2005, Dr. Haughwout noted that the Claimant has been exposed to noise at BIW, listed the

[5] The Claimant did not offer Dr. Penner's *curriculum vitae* or medical qualifications into evidence.

[6] The Claimant did not offer Dr. Haughwout's *curriculum vitae* or medical qualifications into evidence.

variety of tools the Claimant has used throughout his employment, and stated that the Claimant has used earplugs and earmuffs as required since 1986. *Id.* Dr. Haughwout also indicated that the Claimant uses a snowmobile from time to time, but denies any other significant noise exposure, had an ear infection as a child that did not cause any hearing loss, has no history of hereditary hearing loss in his family, and has no other problems with his ears except for some intermittent ringing tinnitus. *Id.* Dr. Haughwout reported that tuning forks confirmed the presence of a sensorineural hearing loss. *Id.*

Dr. Haughwout reviewed the Claimant's audiograms at BIW from August 1986 through April 2004, as well as the Pine Tree audiogram from May 25, 2004. *Id.* He noted that the audiograms reveal a slightly progressive sensorineural hearing loss, which is essentially flat, but contains a small notch at 4000 Hz. *Id.* Applying the American Medical Association, Guide to the Evaluation of Permanent Impairment (the "AMA Guides"), to the May 25, 2004 Pine Tree audiogram, Dr. Haughwout assessed the Claimant's impairment at a 25.3% binaural hearing loss.[7] *Id.*; *AMA Guides* ch. 11.2, tbl. 11-1 at 247, tbl. 11-2 at 248-249 (Linda Cocchiarella & Gunnar B. J. Anderson eds., American Medical Association) (5th ed. 2000). Dr. Haughwout opined that "some of this loss is due to his noise exposure at BIW." CX 6(D).

3. Dr. Makaretz's Evaluation and Opinion

Michael Makaretz, M.D. specializes in otolaryngology and surgery and has been board-certified since 1989. EX 14 at 3. He is currently in practice at Maxwell, Kluger and Makaretz, ENT Assoc. MDPA in Portland, Maine. EX 15 at 21. He is an Assistant Clinical Professor in the Department of Surgery at the University of Vermont, and he serves on the Board of Directors at the Maine Cancer Physicians Organization and on the Credentials Committee at MEDNET. EX 15 at 20-22.

Dr. Makaretz evaluated the Claimant on November 21, 2005 and set forth his findings in a report dated November 23, 2005. EX 21 at 48. Dr. Makaretz reviewed the Claimant's previous audiological evaluations with the exception of the May 5, 2003 audiogram. *Id.* at 48, 51; EX 14 at 27. Based on his review of the audiograms, Dr. Makaretz concluded that the Claimant had suffered "a gradual drop in his hearing at 4000, 6000 and 8000 hertz, though testing does not show that typical notch at 4000 hertz one would expect to see with noise injury." EX 21 at 49. He stated that the test results "do not provide definitive evidence of noise-induced sensorineural hearing loss," though he conceded that he could not refute the opinions of other examiners that noise exposure may have been a contributing cause of the Claimant's hearing loss. *Id.* at 48. It was his impression that the Claimant suffers from sensorineural hearing loss and that "[t]here may be a minor noise-induced component." *Id.* at 51. Applying the AMA Guides to the November 21, 2005 audiogram, Dr. Makaretz calculated the Claimant's hearing impairment at a 15% binaural hearing loss. *Id.*; *AMA Guides* at tbl. 11-1 at 247, tbl. 11-2 at 248-249.

At his deposition on January 17, 2006, Dr. Makaretz stated that the primary finding in a case of noise-induced hearing loss is a sharp drop in hearing at 4000 Hz that returns to normal

[7] The Act requires that determinations of hearing loss be made in accordance with the AMA Guides. 33 U.S.C. § 908(c)(13)(E) (2001).

range at higher frequencies. EX 14 at 5. He testified that if workplace noise were loud on both sides, one would expect any resulting hearing loss to be symmetrical, and that noise-induced hearing loss does not affect the lower frequencies as much as the higher frequencies. *Id.* at 5-6. He noted that the Claimant's earliest audiogram in 1986 showed an asymmetrical hearing loss but that all subsequent audiograms showed symmetrical loss so that the asymmetry observed in 1986 is not significant in determining the cause of the Claimant's hearing loss. *Id.* at 16-17. Dr. Makaretz testified that the Claimant reported that he conscientiously wore hearing protection while working at BIW, and he stated that the use of hearing protection could transform what would otherwise be injurious noise into non-injurious noise. *Id.* at 7. He then reviewed the Claimant's audiograms and testified that the audiograms in 1988 showed that the Claimant had a permanent sensorineural hearing loss. *Id.* at 8-9.[8] He further testified that the pattern shown by these audiograms "is not consistent with noise." *Id.* at 9.[9]

Dr. Makaretz testified that the November 21, 2005 audiogram conducted in his office showed a "bilateral and symmetric mild to moderate sensorineural hearing loss . . . that calculated out at 15 percent disability in each ear." *Id.* at 10. He was asked whether a May 2004 audiogram showing a 25.3 percent bilateral hearing loss was an accurate reflection of the Claimant's hearing loss, and he testified that it was reasonable that the degree of loss shown in 2004 was not permanent and in part attributable to temporary factors. *Id.* at 13-14.[10] He further testified that based on the fact that the Claimant's speech threshold testing numbers in November 2005 were consistent with the audiogram results, he felt that the November 2005 audiogram was valid. *Id.* at 13. Dr. Makaretz was next asked if he could explain the deterioration in the Claimant's hearing between 1988 and 2005, and he responded, "I think that can all be attributed to aging" and that the changes seen in the Claimant are "all very consistent with the deterioration we would expect to see in hearing over the intervening 17 years." *Id.* at 14. He explained that he based this conclusion on a comparison of the Claimant's 1989 and 2005 audiogram results which allowed him to calculate a "correction for aging effects . . . based on OSHA guidelines." *Id.* at 17-18.[11] Using this "correction, Dr. Markaretz stated that "we can attribute all of the hearing change to aging related results." *Id.* at 18. Dr. Makaretz further testified that hearing loss due to aging is also sensorineural, but not in the same pattern that one sees in cases of noise-induced loss. *Id.* at 14-15. Dr. Makaretz explained that in a "typical noise-induced hearing loss pattern, if one looks at this over time, there is a gradual drop at higher

[8] The Claimant, BIW and Birmingham Fire stipulated at Dr. Makaretz's deposition that the April 5, 1988 audiogram shows a 9.1 percent binaural loss under the AMA Guides and that December 22, 1988 audiogram shows an 8.1 percent binaural loss. EX 14 at 8. Dr. Makaretz testified that he suspects that the difference between the degree of loss shown by these two audiograms is due to test variations, and he agreed that taking the average of the two tests (8.6 percent) is as fair as any other method for assessing the extent of the Claimant's permanent hearing loss in 1988. *Id.* at 9-10.

[9] The Claimant properly objected to a question in this line of inquiry as misstating the proper standard for injury causation under the Act. EX 14 at 9. However, I find no basis for striking Dr. Makaretz's testimony that the 1988 audiogram results are not consistent with noise-induced hearing loss because there is no indication that his opinion in this regard was influenced by an incorrect understanding of the applicable legal standard.

[10] The Claimant's objection that this testimony lacked proper foundation is overruled.

[11] Dr. Markaretz testified that the The Employer did not enter the OSHA guidelines Dr. Makaretz relied upon to make this determination into evidence.

pitches and the lower pitches don't drift down quite as fast." *Id.* at 15. He then noted that the Claimant's older hearing tests showed a "low frequency sensorineural loss that has not dramatically changed in the intervening years, but the high pitch frequency hearing has gradually dropped." *Id.* Dr. Markaretz stated that he did not think that the Claimant's low frequency loss is attributable to noise exposure, and he said that he was not sure of the cause, though he added that it is very possibly due to a congenital defect or the consequence of childhood infections. *Id.* at 15-16. In response to a question from the attorney representing Birmingham Fire, Dr. Makaretz stated that based on his review of the audiograms, he was unable to say whether the Claimant's exposure to noise at BIW between September 1986 and September 1988 (the period of Birmingham Fire's insurance coverage) contributed to his high frequency hearing loss. *Id.* at 19.

On cross-examination by the Claimant's attorney, Dr. Makaretz testified that he did not know the noise levels that the Claimant was exposed to at BIW. *Id.* at 20. However, he stated that based on the nature of the Claimant's work, he would have been "potentially exposed to injurious levels of noise . . . [b]ut with hearing protection, that should be bringing him down to safe levels." *Id.* at 20. He then acknowledged that it is "certainly possible" for an individual to sustain a noise-induced hearing loss while wearing hearing protection depending on the noise level. *Id.* at 20-21. Dr. Makaretz was questioned about the typical pattern of noise-induced hearing loss and reiterated his testimony that one would expect to see a disproportionate drop or "noise notch" at 4000 Hz. *Id.* at 21. He also testified that he had not read the entire AMA Guidelines, so he was unable to explain the Guides do not mention 4000 Hz as the level for measuring noise-induced hearing loss, but he asserted, "it's common knowledge within our specialty that a noise notch at 4000 hertz occurs when there's noise-induced sensorineural hearing loss." *Id.* at 22. Dr. Makaretz agreed that his audiogram had not measured the Claimant's hearing at 3000 Hz. *Id.* Regarding his testimony that all of the Claimant's hearing loss since the late 1980s could be explained on the basis of age, Dr. Makaretz stated that the Claimant's age (48 at the time) was not really too young for age-related loss because "hearing starts to deteriorate before the age of 48 . . . [a]nd in some people it deteriorates more quickly than in others." *Id.* at 23, 28-29. He further testified that, aside from minor childhood ear infections, he was not able to identify any other possible causes of the Claimant's s sensorineural hearing loss. *Id.* at 25. He was asked about the opinions of Drs. Penner and Houghwout that noise played some role in the Claimant's hearing loss, and he said that he disagreed because there was no noticeable drop at 4000 Hz and because any changes since 1988 were consistent with aging and not "disproportionate" or more than what one would expect to see with the passage of time. *Id.* at 26. On further examination, Dr. Makaretz testified that he did not consider the change from 1988 (a binaural loss of 8.6 percent based on the average of two audiograms) to 2005 when his audiogram supported calculation of a 15 percent loss to be disproportionate, and he said that the greater degree of loss shown by audiograms in 2004, 2003 and 1998 may have been attributable to the temporary effects of noise exposure within 24 hours of the tests. *Id.* at 27-28. Thus, he maintained his opinion that all of the Claimant's hearing loss over the 17 years between 1988 and 2005 is due to aging." *Id.* at 28.

On redirect examination, Dr. Makaretz testified that although the Claimant's hearing at 3000 Hz was not measured during his November 21, 2005 audiogram as required by the AMA Guides, he was able to calculate a 15 percent binaural loss at 3000 HZ by "extrapolating" from

the measurements at 2000 Hz and 4000 Hz, a method that he believed to be legitimate. *Id.* at 29-30. Finally, Dr. Makaretz testified that differences between the degree of loss shown by his audiogram (15 percent) and earlier audiograms in 2004 (25.3) percent, 2003 (22.5 percent) and 1998 (20 percent) was more than the accepted five decibel margin of error and that it is "certainly possible" that the greater loss shown by those earlier audiograms is representative of some type of temporary threshold shift. *Id.* at 30-32.

C. Causal Relationship Between Any Hearing Loss and BIW Employment

Section 2(2) of the Act defines an injury as an accidental injury arising out of or in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally and unavoidably results from such accidental injury. 33 U.S.C. § 902(2). Section 20(a) of the Act provides a presumption that a claim comes within its provisions. 33 U.S.C. § 920(a). The Section 20(a) presumption "applies as much to the nexus between an employee's malady and his employment activities as it does to any other aspect of a claim." *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 1082 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 820 (1976). To invoke the presumption, the Supreme Court has held that there must be a *prima facie* claim for compensation, to which the statutory presumption refers; that is, a claim "must at least allege an injury that arose in the course of employment as well as out of employment." *U.S. Indus./Fed. Sheet Metal, Inc., et al., v. Director, OWCP*, 455 U.S. 608, 615 (1982). A claimant presents a *prima facie* case by establishing (1) that he or she sustained physical harm or pain and (2) that an accident occurred in the course of employment, or conditions existed at work, which ***could have*** caused the harm or pain. *Bath Iron Works v. Brown*, 194 F.3d 1, 4 (1st Cir. 1999) (*Brown*), citing *Ramey v. Stevedoring Serv. of Am.,* 134 F.3d 954, 959 (9th Cir.1998) and *Susoeff v. San Francisco Stevedoring Co.,* 19 BRBS 149, 151 (1986) (*Susoeff*) (emphasis added); *Kelaita v. Triple A. Machine Shop*, 13 BRBS 326, 330-31 (1981). In establishing that an injury is work-related, the Claimant need not prove that the employment-related exposures were the predominant or sole cause of the injury. If the injury contributes to, combines with or aggravates a pre-existing disease or underlying condition, the entire resulting disability is compensable. *Indep. Stevedore Co. v. O'Leary,* 357 F.2d 812, 815 (9th Cir. 1966); *Rajotte v. General Dynamics Corp.,* 18 BRBS 85, 86 (1986).

The Claimant testified that he was exposed to loud industrial noise throughout his employment at BIW and that he began to experience ringing in his ears after he began working at BIW. He also introduced the medical opinions from Drs. Penner and Haughwout who found that the Claimant has sustained a hearing loss and attributed some of the loss to his occupational noise exposure. CX 6(C)-(D). Based on this evidence, I find that the Claimant has made a *prima facie* showing that he suffered a hearing loss injury and that conditions existed during his employment at BIW that could have caused the hearing loss. BIW argues that the Claimant's evidence does not bring the presumption into play because Dr. Penner's opinion is equivocal, addressing causation as a suggestion rather than a probability, and because Dr. Houghwout's opinion is "very equivocal" and was formed without benefit of the November 2005 audiogram results. BIW Brief at 7-8. Dr. Houghwout's opinion is not equivocal on causation. He stated, "I believe some of this loss is due to his noise exposure at Bath Iron Works." CX 6(D). Moreover, BIW's argument that the doctors failed to articulate their opinions in terms of probabilities focuses on an incorrect legal standard. Where, as here, a claimant provides uncontradicted

testimony that he was exposed to noise at work and thereafter suffered a hearing loss, medical evidence that "supports" a conclusion that that the hearing loss resulted from his employment is sufficient to establish a *prima facie* case and invoke the statutory presumption that the hearing loss arose out of and in the course of his employment. *Brown*, 194 F.3d at 4-5.

Since the Claimant has made out a *prima facie* case, the burden shifts the party(ies) opposing entitlement to "rebut the presumption with substantial evidence that the [hearing loss] . . . was not caused or aggravated by his employment." *Bath Iron Works Corp. v. Director, OWCP*, 109 F.3d 53, 56 (1st Cir. 1997). Thus, the presumption can be rebutted "by showing that exposure to injurious stimuli did not cause the harm" or "that [the Claimant] was exposed to injurious stimuli while performing work covered under the Act for a subsequent employer." *Brown*, 194 F.3d at 5, quoting *Avondale Indus. Inc. v. Director, OWCP*, 977 F.2d 186, 190 (5th Cir.1992) (quoting *Susoeff*, 19 BRBS at 151) (internal quotation marks omitted). Evidence is substantial if a reasonable mind might accept it as adequate to support a conclusion. *See Richardson v. Perales*, 402 U.S. 389, 401 (1971). Under the substantial evidence standard, an employer does not have to exclude any possibility of a causal connection to employment, for this would be an impossible burden; it is enough that it produce medical evidence of "reasonable probabilities" of non-causation. *Bath Iron Works Corp. v. Director, OWCP,* 137 F.3d 673, 675 (1st Cir. 1998); *see also Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 289 (5th Cir. 2003) (rejecting requirement that an employer "rule out" causation or submit "unequivocal" or "specific and comprehensive" evidence to rebut the presumption and reaffirming that "the evidentiary standard for rebutting the § 20(a) presumption is the minimal requirement that an employer submit only 'substantial evidence to contrary.'"), *cert. denied*, 540 U.S. 1056 (2003).

As rebuttal, BIW has introduced the report and deposition testimony from Dr. Makaretz who initially stated that "that noise exposure may have been a contributing factor" and that "there may be a minor noise-induced component" before becoming convinced by the time of his deposition that all of the Claimant's post-1988 hearing loss can be attributed to aging. EX 21 at 48, 51; EX 14 at 18, 28. Although Dr. Makaretz never fully explained this transformation of his opinion, BIW's burden at this stage is one of production, not persuasion. Accordingly, I find that Dr. Makaretz's deposition testimony explaining the basis for his opinion that noise is the sole cause of the Claimant's hearing loss is sufficient to raise a reasonable probability non-causation which is enough to rebut the presumption. Because the successful rebuttal, the presumption "falls out" of the case, and the Claimant bears the burden of establishing causation based on the record as a whole. *Brown*, 194 F.3d at 5. A claimant meets this burden if a preponderance of the evidence establishes the requisite causal connection. *See Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 277-280 (1994).

Neither Dr. Penner nor Dr. Houghwout was deposed, and there is no evidence in the record of their medical qualifications. Their opinions on hearing loss causation are set forth in simple, conclusory sentences in one-page evaluation reports. On the other hand, Dr. Makaretz testified at length, and we know that he is a board-certified otolaryngologist with impressive credentials. However, this is not a case where more is better as there are significant obstacles to fully crediting Dr. Makaretz's opinion on the cause of the Claimant's hearing loss. First, there is the unresolved inconsistency between his initial assessment that noise exposure may have been a contributing factor and his ultimate conclusions that none of the hearing loss is due to noise and

that all of the loss after 1988 is attributable to aging, a factor that was never even mentioned in the initial evaluation report. Since Dr. Markaretz never explained that he was mistaken when he acknowledged that some of the Claimant's hearing loss could be attributable to noise exposure, there is an obvious unreconciled conflict with his final opinion. Second, Dr. Markaretz testified that that the use of hearing protection could transform what would otherwise be injurious noise into non-injurious noise and that the Claimant's use of hearing protection should have reduced his noise exposure to safe levels, but he conceded that he did not know the noise levels that the Claimant was exposed to and that it is possible for an individual to sustain noise-induced hearing loss even with noise protection. TR 14 at 7, 20-21. Moreover, there is no indication that Dr. Markaretz was aware of the Claimant's testimony that he often has to remove his earplugs to converse with coworkers and is thus occasionally exposed to loud noise without protection. Third, Dr. Markaretz's reliance on a comparison of the results of his November 2005 audiogram with the results of the 1988 audiograms to conclude that the difference is entirely consistent with aging is called into question by the greater degree of deterioration shown by some of the earlier audiograms, particularly those conducted in 1998, 2003 and 2004. While Dr. Makaretz attempted to dismiss these earlier results as possibly reflecting the temporary effects of exposure to noise within 24 hours of the testing, this is no more than speculation as there is nothing in the record to show that audiogram results were skewed by injurious exposure to loud noise within 24 hours of any particular audiogram. Additionally, Dr. Makaretz, as discussed below, incorrectly calculated and thereby potentially underappreciated the extent of the Claimant's hearing impairment based on the November 21, 2005 audiogram, thus undermining the rationale for his conclusion that the pattern of deterioration over the years since 1988 is entirely consistent with aging.[12] Finally, Dr. Makaretz's opinion that noise exposure has played no role in any of the Claimant's hearing loss is directly contradicted by Dr. Mazorra, BIW's own occupational health expert. For these reasons, I find that Dr. Makaretz's opinions are deserving of less weight than the opinions from Drs. Penner, Mazorra and Dr. Haughwout. Therefore, I conclude that the Claimant has proved by a preponderance of the evidence that his hearing loss is causally related to his employment at BIW.

D. Extent of the Claimant's Compensable Hearing Loss

Under the 1984 amendments to the Act, which are applicable to the instant claim, Section 8(c)(13) governs compensation for occupational hearing loss. *Bath Iron Works Corp. v. Director, OWCP*, 506 U.S. 153, 166 (1993). Section 8(c)(13) provides that a determination of hearing loss "shall be made in accordance with the guides for the evaluation of permanent impairment as promulgated and modified from time to time by the American Medical Association." 33 U.S.C. 908(c)(13)(E). The extent of any compensable hearing loss must be based on "the most credible evidence of record." *Steevens v. Umpqua River Navigation*, 35 BRBS 129, 133 (2001) (*Steevens*). Under the aggravation rule, an employer is precluded from making any deduction for the portion of a worker's hearing loss that may be attributable to aging. *Port of Portland v. Director, OWCP*, 932 F.2d 836, 839-840 (9th Cir. 1991). Rather, the Claimant is entitled to benefits "for the totality of his occupational hearing loss based on the

[12] Dr. Makaretz attempted to calculate the Claimant's loss at 3000 Hz by taking an average of the loss at 2000 and 4000 Hz which he placed at 35 decibels. EX 21 at 52. However, on the November 21, 2005 audiogram, the measurements for the Claimant's left ear were 30 dB at 2000 Hz and 45dB at 4000 Hz. *Id.* The average of these readings is 37.5, not 35 (30 + 45 = 75 ÷ 2 = 37.5).

most credible evidence of record." *Steevens*, 35 BRBS at 133. The parties disagree on what is the most credible evidence. The Claimant seeks compensation based on the 23.3 percent loss calculated by Dr. Houghwout from the results of the 2004 audiogram. Claimant Brief at 4. BIW counters that Dr. Makaretz's November 21, 2005 audiogram, which he interpreted as showing a 15 percent impairment, is the only credible evidence of the Claimant's current hearing loss and that it constitutes presumptive evidence of any compensable loss pursuant to 20 C.F.R. § 702.441(b). BIW Brief at 10-11.[13]

The Regulations do provide for an audiogram to be treated as presumptive evidence of a claimant's compensable hearing loss if the following conditions are met:

> "[a]n audiogram shall be presumptive evidence of the amount of hearing loss on the date administered if the following requirements are met: (1) [t]he audiogram was administered by a licensed or certified audiologist . . . or by any other person considered qualified . . . pursuant to 29 C.F.R. 1910.95(g)(3) . . . [and] a licensed or certified audiologist or otolaryngologist . . . must ultimately interpret and certify the results of the audiogram[,] . . . set[ting] forth the testing standards used and describ[ing] the method of evaluating the hearing loss as well as providing an evaluation of the reliability of the test results; (2) [t]he employee was provided the audiogram and a report thereon at the time it was administered or within thirty (30) days thereafter; [and] (3) [n]o one produces a contrary audiogram of equal probative value . . . [made] within thirty (30) days thereof where noise exposure continues."[14]

20 C.F.R. § 702.441(b)(1)-(3). Both the May 24, 2004 audiogram performed at Pine Tree and the November 21, 2005 audiogram performed at Dr. Makaretz's office satisfy the requirements of Section 702.441(b)(1) as they were administered by a certified audiologist and interpreted by a licensed otolaryngologist who certified the results, set forth the testing standard and method used to evaluate the Claimant's hearing impairment, and provided an evaluation of the reliability of the test results. CX 6(B), (D); EX 14 a 3-6, 13-14; EX 15; EX 21 at 52. However, neither the May 24, 2004 audiogram nor the November 21, 2005 audiogram complies with the Section 702.441(b)(2) notice requirement since no evidence has been submitted that either audiogram, along with the report, was provided to the Claimant within thirty days of the date it was administered. *See Bridier v. Alabama Dry Dock and Shipbuilding Corp.*, 29 BRBS 84, 86-88 (1995). Although the record indicates that the audiograms and reports were provided to the Claimant's attorney, G. William Higbee, the Benefits Review Board ("BRB") has held that delivery to a claimant's attorney is insufficient to satisfy the regulation. *Mauk v. Nw. Marine Iron Works*, 25 BRBS 118, 123 (1991) (actual physical receipt of the audiogram and accompanying written report is required by the Act). Therefore, neither audiogram is eligible for presumptive status.

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[13] Since BIW contends that the Claimant has suffered no noise-induced hearing loss, it submits that his claim should be denied. The arguments on the extent of any compensable loss are presented as alternatives in the event that the Claimant is found to have suffered a work-related hearing loss. BIW Brief at 10-11.

[14] Because the Claimant continues to work at BIW, I infer that he continues to be exposed to injurious noise. TR 34. Therefore, a contrary audiogram must be submitted within thirty days, not six months.

Further, Dr. Makaretz's November 21, 2005 audiogram did not evaluate the Claimant's hearing loss in accordance with the AMA Guides as required by Section 8(c)(13)(E) of the Act. The *AMA Guides* specifically require that a Claimant's hearing be measured at 500 Hz, 1000 Hz, 2000 Hz, and 3000 Hz. *AMA Guides* at 247. The measurements at these levels must then be added to produce the decibel sum of the hearing threshold level ("DSHL") applicable. *Id.* The DSHL is then used, along with the tables provided by the *AMA Guides*, to determine a claimant's percentage of hearing impairment. *Id.* at tbl. 11-1 at 247, tbl. 11-2 at 248-249. However, the Claimant's hearing was not measured at 3000 Hz in the November 21, 2005 audiogram. EX 21 at 52. Although Dr. Makaretz opined that it was legitimate to correct this deficiency by taking the average of the results at 2000 and 4000 Hz, a calculation that he performed incorrectly, the *AMA Guides* makes no mention of this as a suitable alternative to taking a measurement at 3000 Hz. *AMA Guides* at 247. Since the November 21, 2005 audiogram thus fails to comply with the AMA Guidelines, as required by Section 8(c)(13)(E), it cannot be determinative, and I will accord it no weight. *See Maersk Stevedoring Co. v. Container Stevedoring Co.*, 210 F.3d 384, 2000 WL 27883*2 (9th Cir. 2000).

While I have rejected the November 21, 2005 audiogram as determinative of the amount of the Claimant's compensable hearing loss, I do not find it appropriate to exclusively rely on the results of the 2004 Pine Tree audiogram, as urged by the Claimant, especially where the record shows that the Claimant's results have been variable over time, and an audiogram performed one month earlier at BIW produced results that calculate to a 17.5 percent loss. EX 17 at 26; BX 12. Since the April 14, 2004 BIW audiogram also satisfies the requirements of Section 8(c)(13)(E) of the Act and Section 702.441(b)(1) of the regulations, I find that it is appropriate to average the results of these two most recent audiograms to arrive at the extent of the Claimant's compensable hearing loss. *Steevens,* 35 BRBS 129, 133 (2001). Therefore, I conclude that the Claimant has a compensable binaural hearing loss of 21.4 percent.

E. Liability

I must now determine whether Birmingham Fire or BIW, as self-insured, is liable for the Claimant's pulmonary condition. Under the LHWCA, "the carrier which last insured the liable employer during the period in which the claimant was exposed to the injurious stimuli and prior to the date the claimant became disabled by an occupational disease arising naturally out of his employment and exposure is responsible for discharging the duties and obligations of the liable employer." *Liberty Mutual Ins. Co. v. Commercial Union Ins. Co*., 978 F.2d 750, 756 (1st Cir. 1992). The uncontradicted evidence in this record establishes that the Claimant continued to have exposure to loud noise at BIW after it became self-insured. The Claimant testified that he continued to work with and around chipping guns, grinders, sanders, wheel cutters, saws, hammers and other machinery after 1988. TR 18-35. He further testified that a three-year period during the 1990s, when Department 50 employees did all chipping and grinding work, including chipping and grinding for other trades, was the noisiest period of his employment at BIW. TR 30-32. Based on this uncontradicted evidence, I find that the record establishes that the Claimant was exposed to injurious noise in the course of his employment at BIW after BIW became self-insured for workers' compensation liability on September 1, 1988. Therefore, I find that BIW is liable, as a self-insurer, for the Claimant's hearing loss.

F. Compensation and Benefits Due

1. Compensation

Section 8(c)(13) of the Act provides for compensation at a rate equal to two-thirds of an employee's average weekly wage for a maximum of 200 weeks in cases of permanent partial disability resulting from hearing loss. 33 U.S.C. § 908(c)(13). Based a binaural hearing impairment of 21.4 percent, I find that he is entitled to an award of 42.8 weeks of compensation from May 24, 2004. *MacLeod v. Bethlehem Steel Corp*., 20 BRBS 234, 237 n.4 (1988).[15] This compensation is payable at the rate of $504.92 per week, which is equal to two-thirds of the Claimant's stipulated average weekly wage.

2. Special Fund Relief

BIW seeks relief from its liability for the Claimant's compensation pursuant to the Special Fund provisions of Section 8(f) of the Act, which limits an employer's liability when an employee who is already partially disabled suffers a subsequent work-related injury, and the preexisting condition contributes to a greater level of permanent disability. *Gen. Dynamics Corp. v. Sacchetti*, 681 F.2d 37, 39-40 (1st Cir. 1982). Under Section 8(f), as amended in 1984, an employer who retains an employee after discovering through the administration of an audiogram that the employee has sustained a hearing loss is entitled to relief from liability for any subsequent worsening of the employee's hearing loss. *Risch v. Gen. Dynamics Corp.*, 22 BRBS 251, 255-56 (1989). The employer's liability in such cases is limited to the lesser of 104 weeks or the extent of hearing loss attributable to the subsequent injury. *Balzer v. Gen. Dynamics Corp.*, 22 BRBS 447 (1989), *aff'd on recon. en banc*, 23 BRBS 241 (1990); *Machedo v. Gen. Dynamics Corp*., 22 BRBS 176, 182 (1989).

In support of its application for Special Fund relief, BIW states that the medical evidence shows that the Claimant had a manifest, pre-existing binaural hearing impairment of 8.6% when it became self-insured on September 1, 1988. BIW Brief at 11-12. Thus, it is BIW's position that its responsibility should be limited to any additional work-related hearing loss suffered by the Claimant subsequent to September 1, 1988 and that that the Special Fund should be liable for an 8.6% pre-existing binaural hearing impairment. Although BIW did not perform an audiological evaluation for the Claimant on September 1, 1988, it suggest that the average, 8.6%, of the April 5, 1988 audiogram (9.1% binaural hearing impairment) and the December 22, 1988 audiogram (8.1% binaural hearing impairment), is appropriate . Emp. Br. at 6; EX 14 at 9-10.[16] I agree. *See Steevens*, 35 BRBS at 133.

[15] Because the Claimant continues to be exposed to injurious noise at BIW, I find that May 24, 2004, the date of the latest audiogram performed in accordance with the guidelines established by the *AMA Guides*, will be used as the date of the Claimant's injury.

[16] Although BIW also performed an audiogram for the Claimant on April 26, 1988 showing a 0.9% hearing loss, this percentage of hearing loss is not consistent with the other audiological evaluations performed in 1988. CX 6(A) at 9; EX 17 at 43; BX 7 at 31. Therefore, I find that an average of the April 5, 1988 and the December 22, 1988 may be used without including the April 26, 1988 audiogram into the average.

Although the District Director recommended that BIW's Section 8(f) application be denied, the evidence for this claim was still developing and discovery was not yet complete. *See* ALJX 1. Based on the April 5, 1988 and the December 22, 1988 audiological evaluations which satisfy the requirements of Section 8(c)(13)(E) of the Act and Section 702.441(b) of the regulations, I find that BIW has shown that the Claimant had a pre-existing binaural hearing impairment of 8.6 percent in 1988, when it became self-insured. Since BIW continued to employ the Claimant after the pre-existing hearing loss was manifested by the 1988 audiograms, and since the Claimant thereafter sustained additional work-related hearing loss, Section 8(f) operates to limit BIW's compensation liability to the lesser of 104 weeks of compensation or the extent of the loss attributable to the subsequent injury. As discussed above, the Claimant's 21.4 percent binaural hearing impairment entitles him to 42.8 weeks of compensation pursuant to Section 8(c)(13) of the Act. The pre-existing portion of this loss, 8.6%, equates to 17.2 weeks of compensation. Therefore, Section 8(f) limits BIW's liability to 25 weeks of compensation, the amount attributable to the subsequent hearing loss, and the Special Fund is liable for 17.2 weeks of compensation, the amount attributable to the pre-existing loss. Pursuant to Section 8(f)(2)(A) of the Act, the Special Fund's payments shall commence after cessation of payments by BIW. 33 U.S.C. §908(f)(2)(A) (2001).

3. Interest

The first installment of compensation under the LHWCA becomes due fourteen days after a claimant gives notice to the employer of an injury or the employer has knowledge of the injury. 33 U.S.C. § 914(b) (2001). The Claimant gave notice to BIW and filed his claim for hearing loss on April 7, 2005. CX 1. Since compensation payments were not timely made, I find that the Claimant is entitled to an award of prejudgment interest. *See Foundation Constructors v. Director, OWCP*, 950 F.2d 621, 625 (9th Cir.1991) (noting that "a dollar tomorrow is not worth as much as a dollar today" in authorizing interest awards as consistent with the remedial purposes of the Act). *See also Quave v. Progress Marine*, 912 F.2d 798, 801 (5th Cir.1990), *reh'g denied* 921 F. 2d 273 (1990), *cert. denied*, 500 U.S. 916 (1991). The interest shall be assessed as of the date the Claimant's compensation became due (*i.e.*, beginning on the fourteenth day after he filed his claim); *Wilkerson v. Ingalls Shipbuilding, Inc*., 125 F.3d 904, 907-908 (5th Cir. 1997); and the appropriate interest rate shall be determined pursuant to 28 U.S.C. § 1961 (2003) as of the filing date of this Decision and Order with the District Director.

4. Medical Care

Pursuant to Section 7 of the Act, BIW remains responsible for providing reasonable and necessary medical care for the Claimant's work-related hearing impairment. 33 U.S.C. § 907(a); *Ingalls Shipbuilding, Inc. v. Director, OWCP*, 991 F.2d 163, 165-166 (5th Cir. 1993).

5. Attorney's Fees

Having successfully established his right to compensation, the Claimant is entitled to an award of attorney fees under Section 28(a) of the Act. *Lebel v. Bath Iron Works*, 544 F.2d 1112, 1113 (1st Cir. 1976). On April 17, 2006, counsel for the Claimant, G. William Higbee, submitted an itemized application for attorney's fees, which requested $5,776.00 in attorney's

and paralegal's fees, and $575.34 in expenses, for a total of $6,351.34. BIW will have 15 days from the date this Decision and Order is filed with the District Director to file any objections to the requested fees and expenses.

IV. Order

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the entire record, the following compensation order is entered:

1. The Bath Iron Works Corporation shall pay to the Claimant, M. M., permanent partial disability benefits for his hearing loss for a period of 25 weeks at the rate of $504.92 per week, commencing as of May 24, 2004;

2. Upon completion of the compensation payments by the Bath Iron Works Corporation, the Special Fund shall pay to the Claimant permanent partial disability benefits for his hearing loss for a period of 17.2 weeks at the rate of $504.92 per week;

3. The Bath Iron Works Corporation and the Special Fund shall pay to the Claimant interest on all past due compensation benefits at the rate provided by 28 U.S.C. § 1961 (2003), computed from the date each payment was originally due until paid, and the applicable rate shall be determined as of the filing date of this Decision and Order with the District Director;

4. The Bath Iron Works Corporation shall provide the Claimant with such reasonable, appropriate and necessary medical care and treatment as the Claimant's work-related hearing loss may require;

5. The Bath Iron Works Corporation shall have 15 days from the date this Decision and Order is filed with the District Director to file any objection to the fees and expenses requested by the Claimant's attorney, G. William Higbee; and;

6. AIG Claim Service/Birmingham Fire Insurance Company is dismissed as a party to the claim for benefits based upon an occupational hearing loss; and

7. All computations of benefits and other calculations, which may be provided for in this Order, are subject to verification and adjustment by the District Director.

SO ORDERED.

A

DANIEL F. SUTTON
Administrative Law Judge

Boston, Massachusetts